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THE

Medical Jurisprudence

OF

INEBRIETY.

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THE MEDICAL JURISPRUDENCE OF INEBRIETY.

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In a discussion like that proposed before the Medico-Legal Society, in which the question is to be considered by such able medical men from the medical side or standpoint, it has seemed to me that it would be of interest to both professions, as well as to laymen, to have the inquiry made as to those relations which attach by law to inebriety, as well in the civil and domestic relations of the inebriate, as in regard to crimes committed by persons, while acting under the influence of intoxicants or while in a state of intoxication.

What, then, is the present legal status of the question?

I shall briefly state (but have neither opportunity nor space to discuss), what I believe to be the law upon the subject; citing and grouping authorities the civil side first, and the question of criminal responsibility second.

I.—CIVIL RELATIONS.—1. *Intoxication* was regarded by the common law, when complete and characterized by unconsciousness, as a species of insanity. Lord Coke's

4th manner of "*non compos mentis*" was, "4. By his own act as a drunkard."*

Delirium tremens, which results directly from habits of intoxication, is in law considered to be a form of insanity, and this has been repeatedly held by the courts.†

It has always been a well-settled rule of law that no person can make a contract binding upon himself while he is wholly deprived of his reason by intoxication. This would be true as to deeds, wills, all instruments and obligations of every kind.‡

This rule is not changed where the intoxication was not procured by the other party to the contract, but is voluntary on the part of the drunkard.§

By the common law, as well as by the New York Statute, a testator must, at the time of the execution of a will, be of "*sound mind and memory*," and it is as requisite to have the presence of a "*disposing memory*," as a "*sound mind*." ‖

(*b.*) By common law and by statute law an intoxicated person is thereby rendered incompetent as a witness.

* Coke Litt., 248, a; Beverly Case, Coke. 124; Buswell on Insanity, § 295.

† Macconchey *v.* The State, 5 Ohio St. 77; Carter *v.* The State, 12 Tex. App., 500; Buswell on Insanity, § 153; Erwin *v.* State, 10 Tex., 700.

‡ Prentice *v.* Achorn, 2 Paige 30; Pitt *v.* Smith, 3 Camp., 33; Cole *v.* Robbins, Bul. N. P., 172; Morris *v.* Clay, 8 Jones (N. C.) 216; King *v.* Bryant, 2 Hayw., 394; White *v.* Cox, 3 Hayw., 78; Buswell on Insanity, § 393.

§ Wigglesworth *v.* Steers, 1 Hen. & Man., 70; Barrett *v.* Buxton, 2 Aiken 167.

‖ N. Y. Rev. Stat., art. 2, chap. 6; Parr 2, § 20, 5th ed.; Forman's Will, 54 Barb., 274; Van Guysling *v.* Van Kuren, 35 N. Y., 70; Aiken *v.* Weekerly, 19 Mich., 482; Lowder *v.* Lowder, 58 Ind., 538; Converse *v.* Converse, 21 Vt., 168.

The statute law usually classifies such intoxicated persons as lunatics, and the provisions frequently apply similarly to each, and to both.*

(*c*) In the marriage contract, which in some cases is treated on different grounds from all other contracts, from the necessity of the case, and consequences upon consummation, the sound general rule has been: that if the party was so far intoxicated as not to understand the nature and consequences of the act, this would invalidate the contract.†

2. The analogy between lunacy and total intoxication, or even habitual drunkenness, is doubtless most marked in the statutes of the various states regarding the care and custody of the person and estates of lunatics, idiots and habitual drunkards.

(*a.*) By English law the Lord Chancellor, as the direct representative of the Crown, has always exercised the right of assuming the custody and control of the persons and estates, of all those who, by reason of imbecility or want of understanding, are incapable of taking care of themselves.

Writs *de lunatico inquirendo* were issued in cases to inquire whether the party was incapable of conducting his affairs on account of habitual drunkenness.

The Supreme Court of every American State would doubtless have the right which the Court of Chancery exercised under the law of England in the absence of

*N. Y. Rev. Statutes; Genl. Stat. Minn., 1878, c. 73, § 9, subd. 1; Connoly *v.* Lynch, 27 Minn., 435.

† Johnston *v.* Browne, Ferg. Const. Law Rep., 229.

any statute law. This must be so in the nature of things in American States; the principle has been exercised and adjudicated on in Kentucky, in Maryland, Illinois, Indiana and North Carolina.*

The Legislatures of the various States have vested this power by statutory enactments in various tribunals, for example in New York, by the old law in the chancellor; in New Jersey in the Orphans' Court; in South Carolina equally to the law and equity side of the courts, and now in New York, where the distinction between law and equity has been abolished, in the Supreme Court, which exercises it.

It will be observed that in many of the American States the habitual drunkard even, is classified and treated under the same provisions, and in the same manner as the lunatic and the idiot, notably in Pennsylvania, New Jersey, Maryland, Illinois, New York and many other States.

Taking New York as a fair illustration of the principle, it has been held by the courts, that all contracts made by habitual drunkards who have been so adjudged in proceedings *de lunatico inquirendo* are actually void.† And that the disability of the habitual drunkard continues after the committee has been appointed even when he is perfectly sober and fully aware of the nature and consequences of his acts.‡

* Nailor *v.* Nailor, 4 Dana, 339; Colton in re, 3 Md. Ch., 446; Corrie's Case, 2 Bland's Ch., 448; Tomlinson *v.* Devore, 1 Gill., 345; Dodge *v.* Cole, 97 Ill., 338; McCord *v.* Ochiltree, 8 Blackf., 151; Lathan *v.* Wiswall, 2 Ired. Eq, 294.

† L. Amoureaux *v.* Crosby, 2 Paige, 422.

‡ Wadsworth *v.* Sharpsteen, 8 N. Y., 388.

It has also been held that *habitual drunkenness*, being established, it is *prima facie* evidence of the subject's incapacity to manage his affairs.*

We may then assume, in considering the medical jurisprudence of inebriety, that the law has always regarded and treated intoxication as a species of mental derangement, and has considered, and treated the habitual or other drunkard, as entitled to the special care and protection of Courts of Equity in all matters relating to his civil rights, his domestic concerns, his ability to make contracts, his intermarrying, and disposing of his property, by deed, gift or devise.

The law has gone farther, for it has thrown around him, its protecting arm and shield, when it is satisfied, that he has become so addicted to drink, as to seriously interfere with the care of his estate, and the courts have then come in and taken absolute control, of both person and estate of drunkards, in their own interest and for their presumed good.

Medical men should keep in mind the distinction running all through the law between insanity and irresponsibility. The medical view, that irresponsibility should follow where insanity exists, has nowhere been conceded by the law, and this distinction must be borne in mind in the subject here under consideration.

II.—CRIMINAL RELATIONS.—This brings us to the second question: The relation of the inebriate to the criminal law for illegal acts, committed while intoxi-

*Tracy in re, 1 Paige, 580; 1 Rev. St. (2d ed.) Ch. 5, tit. 2, § 1.

cated, which seems more harsh in its practical effect, than the principles which govern him in his civil and social relations, to society and the State.

This seeming hardship however, is due to the capacity of the drunkard, considered objectively, for wrong-doing. In the one case his position as a civil agent is that of a unit of society merely—one who is, as it were, to be "saved from himself"; in the other case, the criminal aspect of the drunkard, it is the weal of society which is to be conserved and protected.

1. That form of intoxication which results in the total or partial suspension of or interference with, the normal exercise of brain function, is regarded at law as mental unsoundness and sometimes amounts to a species of insanity. It has been held at law, to be a voluntary madness, caused by the wilful act of the drunkard, and the decisions have been uniform that where reason has been thus suspended, by the voluntary intoxication of a person otherwise sane, that this condition does not relieve him from the consequences of his criminal acts, or, more carefully stating it, from acts committed by him in violation of law, while in that state.*

(*a.*) There are decisions which go to the length of holding, that the law will not consider the degree of intoxi-

* Kenney *v.* People, 31 N. Y., 330; 27 How., 202; 18 Abbott, 91 Lonergan *v.* People, 6 Park., 209; 50 Barb., 266; Freery *v.* People, 54 Id., 319; People *v.* Porter, 2 Park., 214; People *v.* Fuller, Id., 16; People *v.* Wildey, Id., 19; Dammaer's Case, 15 St. Pr,, 522; Frost's Case, 22 St. Tr., 472; State *v.* Toohey, 2 Rice Dig. (S. C) 105; People *v.* Rogers, 18 N. Y., 9; State *v.* Thompson, Wright, 617 (Ohio); Swan *v.* The State, 4 Humphy., 136; Com. *v.* Hawkins, 3 Gray, 463 Mass.); Cluch *v.* State, 40 Ind., 264; State *v.* Thompson, 12 Nev., 140

cation, whether partial, excessive or complete, and even that if the party was unconscious at the time the act was committed, such condition would not excuse his act; and, in some cases, judges have gone so far, as to instruct juries that intoxication is actually an aggravation, of the unlawful act rather than an excuse.

But the better rule of law now undoubtedly is, that if the person, at the moment of the commission of the act, was unconscious, and incapable of reflection or memory, from intoxication, he could not be convicted.

There must be motive and intention, to constitute crime, and in such a case the accused would be incapable from intoxication of acting from motive.†

(*b.*) The reasons upon which the rule of law rests may, with great propriety, be considered, and should be carefully studied, before any attempt at criticism is made.

1. The law assumes that he who, while sane, puts himself voluntarily into a condition, in which he knows he cannot control his actions, must take the consequences of his acts, and that his intentions may be inferred.‡

2. That he who thus voluntarily places himself in such a position, and is sufficiently sane to conceive the

* People *v.* O'Connell, 62 How. Pr., 436; People *v.* Robinson. 1 Parker Cr. Rep., 649; Rex *v.* Carroll, 7 C & P., 145; Dammaer's Case, *supra;* Frost's Case, *supra;* State *v.* Thompson, *supra;* United States *v.* Forbes, Crabbe., 558; Blk, Com., 26; 1 Coke, 247.

† Buswe.l on Insanity, § 446, note 6; People *v.* Rogers, 18 N. Y., 9, Denio; Cluck *v.* State, 40 Ind, 264; Kenney *v.* People, 31 N. Y., 330.

‡ People *v.* Garbutt, 17 Mich., 9: Commonwealth *v.* Hawkins, 5 Gray, 463.

perpetration of the crime, must be assumed to have contemplated its perpetration.*

3. That as malice in most cases must be shown or established to complete the evidence of crime, it may be inferred, from the nature of the act, how done, the provocation or its absence, and all the circumstances of the case †

In cases when the law recognizes different degrees of a given crime, and provides that wilful and deliberate intention, malice and premeditation must be actually proved to convict in the first degree, it is a proper subject of inquiry whether the accused was in a condition of mind to be capable of premeditation.‡

Sometimes it becomes necessary to inquire, whether the act was done in heat of passion, or after mature premeditation and deliberation, in which the actual condition of the accused and all the circumstances attending his intoxication, would be important as bearing upon the question of previous intent and malice.§

(c.) The New York Penal Code lays down with precision the provision of law governing the question of responsibility in that State as follows:

§ 22. *Intoxicated persons.*—No act committed by a

* People *v.* Robinson, 2 Parker cr., 235.

† Buswell on Insanity, § 450; Buswell *v.* Commonwealth, 20 Grat.

‡ Buswell on Insanity, § 450; Hopt *v.* People, 104 U. S.; Penn *v.* McFall, Addison, 255; Keenan *v.* Com., 44 Penn. St., 55; State *v.* Johnson, 40 Conn., 136; Harte *v.* State, 11 Humph., 154, and cases cited in note to Buswell on Insanity, § 450.

§ Kelly *v.* Commonwealth, 1 Grant (Pa.) 481; Platte *v.* The State, 9 Hump., 663.

person, while in a state of intoxication, shall be deemed less criminal by reason of his having been in such condition. But whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute a particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act.

(*d.*) Voluntary intoxication, though amounting to a frenzy, has been held not to be a defense when a homicide was committed without provocation.*

(*e.*) *Delirium tremens*, however, a condition which is the result of drink, and is remotely due to the voluntary act of the drunkard, has been held to be a defense to acts committed while in the frenzy, similar to the defense of insanity.†

(*f.*) It has been held that when inebriety develops into a fixed and well-defined mental disease, this relieves from

*People *v* Rogers, 18 N. Y., 9 (reversing 3 Pack., 632); Kenny *v.* People *v.* 31 N. Y., 330; People *v.* Robinson, 1 Pack., 649; 2 Id., 235; People *v.* Hammil, id., 223; People *v.* Batting, 49 How., 392; People *v.* Eastwood, 3 Park., 25; 14 N. Y., 562; State *v.* Harlow, 21 Mo., 446; Shanahan *v.* Conn., 8 Bush, 463; Rafferty *v.* People, 66 Ill., 118; Charci *v.* State, 31 Ga., 424; Humphreys *v.* State, 45 Id., 190.

Real *v.* People, 55 Barbour, 551; 42New York, 270; Willis *v.* Com., Va.), 22; Albany Law Journal, 176; Maconhey *v.* State, 5 Ohio, (77; Carter *v.* State, 12 Tex. Ap., 500; Buswell on Insanity, § 158; Erwin *v.* State, 10 Tex., 700.

responsibility in criminal cases, and such cases will be regarded and treated as cases of insanity.*

(*g.*) It may now be regarded as a settled rule that evidence of intoxication is always admissible, to explain the conduct and intent of the accused, in cases of homicide.†

(*h.*) In crimes less than homicides, and especially where the intent is not a necessary element to constitute a degree or phase of the crime, this rule does not apply.

The practical result, however, in such cases, and in those States where the latter provision of the New York Penal Code has not been adopted, is to leave this whole subject, to the judges, who fix the details of punishment. This is a great public wrong, because each judge acts on his own idea, and one is merciful and another harsh. If it is placed by law in the breast of the judges, it should be well-defined and regulated by statute. Lord MacKenzie well says: "The *discretion* of a judge is the law of tyrants."

3d. It will be observed that the law has not yet judicially recognized inebriety as a disease, except in the cases of delirium tremens—above cited—and hardly even in that case.

It is for publicists, judges and law-makers to consider the claim now made, that science has demonstrated inebriety, to be a disease.

*Lonergan *v.* People, 6 Park., 209; 50 Barb., 266; O'Brien *v.* People, 48 Barb., 274; People *v.* Williams, 43 Cal., 344; U. S. *v.* Drew, 5 Mason, 28; State *v.* McGonnigal, 5 Harling., 510.

†Lonergan *v.* People, 6 Park., 209; 50 Barb., 266; People *v.* Hamill, 2 Park., 223; People *v.* Rogers 18 N. Y., 9.

If this is conceded, what changes are needed to modify the law, as it at present stands, so as to fully preserve the rights of society, in its relation to the unlawful acts of inebriates, with a proper and just sense of the rights of the inebriate himself?

This contribution is made from the legal standpoint purely, and is designed merely to open this interesting discussion for both professions, to which such names as Dr. Norman Kerr, Dr. T. D. Crothers, Dr. Joseph Parrish, Dr. Charles H. Hughes, Dr. T. L. Wright and others will contribute the medical view, a discussion which I hope may arrest the thoughtful attention of the students of the subject throughout the world.